

Remarks

Reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Generally stated, the present invention provides a distinctive article, which in particular configurations, may be an absorbent, feminine care article. The article comprises a deformation-control member which can include a medial section, and a selected stiffened region. The stiffened region can include a first array of individual, stiffening elements, and at least a second array of individual, stiffening elements. Each of the first and second arrays of stiffening elements can have a convergently arranged nose-end, and a relatively divergently arranged tail-end. In a particular feature, the first and second arrays of stiffening elements can be counter-positioned. In other features, each nose-end can be positioned toward a central region of the article, and each tail-end can be positioned toward an end region of the article. In still other features, each nose-end can be positioned toward an end region of the article, and each tail-end can be positioned toward a central region of the article. A further feature can include first and second arrays of stiffening elements that are configured to substantially avoid intersecting in the medial section of the deformation-control member. In still another feature, the deformation-control member can be an appointed shaping layer in an absorbent body. Other desired configurations of the invention can include a liquid-permeable cover, a baffle, and an absorbent body which is operatively sandwiched between the cover and baffle. Further aspects are set forth in the specification and claims.

By incorporating its various aspects and features, the article of the invention can, for example, provide a distinctive configuration of embossments or other stiffening elements that can better produce a desired deformation of the article and can better maintain a desired article shape. In particular arrangements, the article of the invention can provide an article-deformation which can better conform to the contours of the wearer's body. The article of the invention can also provide an improved pattern of embossments or other surface contours that can better provide an improved direction and regulation of liquid flow, and can help move liquid away from a cover member of the article. The article can be less susceptible to premature leakage, and can provide greater protection and confidence to the wearer. Particular features can provide improved aesthetics and visual cues or indicators of absorbency and leakage protection.

Claims 1-2, 9-11, 14-15, 17 and 19 have been alleged to be actionable under 35 U.S.C. § 102 based on U.S. Patent Application Publication Number US 2002/0040212 by Drevik (Drevik). This rejection is respectfully traversed to the extent that it may apply to the currently presented claims.

As described by Drevik, an absorbent article includes an elongate absorbent core having an upper surface and a lower surface, a pair of opposed longitudinal edge portions terminating in longitudinal edges and a pair of opposed transverse edges, the core having a first end portion, a second end portion and a central portion located between the end portions; a liquid permeable topsheet extending over the upper surface; a liquid barrier backsheet covering the lower surface of the absorbent core; barrier strips, each of the barrier strips covering a respective longitudinal edge portion and forming a liquid-retaining pocket along a respective longitudinal edge portion; and a longitudinal elastic member arranged along each of the barrier strips that are placed along each longitudinal edge portion of the absorbent core, the elastic members extending in at least the central portion of the absorbent core; the elastic members each include a plurality of spacers arranged at a distance from each other along a length of the elastic members to create fluid conducting channels.

As taught by Drevik at paragraph [0027]:

....Thus, the elastic members 50, 52 serve to hold the barrier strips 46, 48 of the sanitary napkin 10 in contact against the user's body, in order to ensure that, during use, no gap arises between the sanitary napkin 10 and the user's body, through which gap body fluid could leak from the sanitary napkin 10. Since the material of the barrier strips 46, 48 is primarily hydrophobic, migrating body fluids tend to flow through the absorbent core rather than through the resilient barrier strips 46, 48. Since the barrier strips 46, 48 serve to conceal the longitudinal edge portions 18, 20, any collection of fluid at the edge portions is concealed, thereby imparting an impression of increased safety and cleanliness to the wearer. ... (emphasis added)

As taught by Drevik at paragraph [0029]:

.... The beads 54 serve as a spacing means 60 (as illustrated in FIG. 6 and 7) between the barrier strips 46, 48 and the top sheet 36 and will create fluid conducting channels 62 (as illustrated in FIG. 7) between the barrier strips 46, 48 and the top sheet 36 in a direction from the center of the sanitary napkin 10 to the longitudinal sides of the sanitary napkin 10. The channels 62 are especially advantageous when the barrier strips 46, 48 are pressed against the top sheet 36 and the upper surface 14 of the absorbent core 12, by an external force, e.g., tight trousers, or if the user is sitting down. The channels 62 then allow migrating body fluids to flow under the barrier strips 46, 48 even when the barrier strips 46, 48 are pressed against the top sheet 36, thereby increasing the flow through the absorbent core 12 rather than through the barrier strips 46, 48 or over the barrier strips 46, 48. ... (emphasis added)

Accordingly, it is apparent that Drevik fails to disclose or suggest an article which includes a deformation-control member having a selected stiffened region, in the configurations called for by Applicants' presented claims.

Drevik (e.g. FIG. 1), shows beads 54 or short cylinders 56 that are aligned along the relatively longer, longitudinal-direction of the article, and extend crosswise, all parallel to one another along

the relatively shorter, width-direction of the article. Drevik (e.g. FIG. 3) shows a perspective view of the three-dimensional feature of the short cylinders. FIG. 4 of Drevik shows long cylinders ~~53~~ that are aligned along the article, and extend crosswise, all parallel to one another along the relatively shorter, width-direction of the article. FIG. 5 of Drevik shows a perspective view of the three-dimensional feature of the long cylinders.

Drevik, however, does not disclose or suggest a configuration having a deformation control member with a stiffened region which includes a first array of individual, stiffening elements, and at least a second array of individual, stiffening elements, wherein each of the first and second arrays of stiffening elements have a convergently arranged nose-end, and a relatively divergently arranged tail-end, as called for by Applicants' presented claims. Neither does Drevik teach a configuration having a stiffened region wherein the first and second arrays of stiffening elements are counter-positioned, as called for by the claimed invention. Additionally, Drevik fails to disclose or suggest a configuration wherein each nose-end is positioned toward a central region of the article, and each tail-end is positioned toward an end region of the article; or wherein each nose-end is positioned toward an end region of the article, and each tail-end is positioned toward a central region of the article, as called for by particular claims of Applicants. Drevik also fails to teach a configuration wherein the stiffening elements have the recited alignment angles, or wherein the deformation-control member is an appointed shaping layer in an absorbent body, as called for by other particular claims. As a result, when compared to Applicants' claimed invention, the structures taught by Drevik would be less able to provide desired regions of controlled flexibility and bending, and would be less able to provide desired levels of fit and comfort.

It is, therefore, readily apparent that Drevik fails to teach Applicants' claimed invention. Accordingly, reconsideration and withdrawal of the Examiner's actions under 35 U.S.C. § 102 are respectfully requested.

Claims 3-8, 18 and 20-23 have been alleged to be actionable under 35 U.S.C. § 103(a) based on Drevik. This rejection is respectfully traversed to the extent that it may apply to the currently presented claims.

It is submitted that the reasons previously set forth in the remarks pertaining to 35 U.S.C. § 102 are equally pertinent to the patentability of claims 3-8, 18 and 20-23, and are repeated in response to the Examiner's action under 35 U.S.C. § 103(a). Moreover, it is submitted that Drevik provides no suggestion or motivation to make the changes and modifications needed to synthesize the invention called for by Applicants' presented claims.

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It is well established that the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious, unless the prior art suggested the desirability of the modification. It is also well established that it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. Where the cited references do not teach how make the particular combinations needed to arrive at the invention called for by Applicants' claims, the claimed invention cannot be deemed "obvious". Additionally, it is well established that a prior art reference must be evaluated as an entirety and that the prior art must be evaluated as a whole. Where neither any reference considered in its entirety, nor the prior art as a whole, suggests the combination claimed, the invention is non-obvious.

It is respectfully submitted that the particular combinations of features that are called for by the claimed invention would not be apparent or "obvious" to the skilled person. Only by using impermissible "hindsight" and by employing Applicants' disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the skilled person be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of Applicants' disclosure, however, the required changes would be unapparent and unobvious to the skilled person.

It is, therefore, respectfully submitted that Applicants' presented claims are patentable over the documents cited by the Examiner. Accordingly, reconsideration and withdrawal of the actions under 35 U.S.C. § 103 are respectfully requested.

Claims 1-7, 9-11, 13-16, and 18-26 have been alleged to be actionable under 35 U.S.C. § 103(a) based on U.S. Patent Application Publication Number 2004/0176734 by Rasmussen et al. (Rasmussen). This rejection is respectfully **traversed** to the extent that it may apply to the currently presented claims.

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It is submitted that pursuant to 35 U.S.C. § 103(c), Rasmussen is not a proper reference, and is not properly citable against the present patent application. In pertinent part, 35 U.S.C. § 103(c) provides:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. (emphasis added)

In the present application, it is believed that subsections (a), (c) and (d) of 35 U.S.C. § 102 are not applicable to the presently claimed invention, and the Examiner has offered no evidence to the contrary. Since Rasmussen was published September 9, 2004, after the filing date of the present application, Rasmussen is also not applicable to the presently claimed invention under subsection (b) of 35 U.S.C. § 102.

The Rasmussen publication corresponds to U.S. Patent Application Serial Number 10/379,942. At the time the presently claimed invention was made, the subject matter of the Rasmussen publication was owned by or subject to an obligation assignment to Kimberly-Clark Worldwide, Inc. This is evidenced by the enclosed copy of the NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT regarding the Assignment of the subject matter of the Rasmussen publication to Kimberly-Clark Worldwide, Inc., the recordation of which can be found at REEL: 013734, FRAME: 0156.

The subject matter of the presently claimed invention (U.S. Application Serial No. 10/781,432) was also under an obligation to assign and has been assigned to Kimberly-Clark Worldwide, Inc. The recordation of this Assignment can be found at REEL: 015005, FRAME: 0863. A copy of the NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT regarding the Assignment of U.S. Application Serial No. 10/781,432 is enclosed for your reference.

In view of the above, it is evident that the subject matter of the Rasmussen publication (U.S. Patent Application Serial No. 10/379,942) and the presently claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation assignment to the same person. Accordingly, 35 U.S.C. § 103(c) is applicable to the Rasmussen publication. As a result, the Rasmussen publication is not an available reference under subsections (e), (f), or (g) of 35 U.S.C. § 102, and is not properly citable to support a rejection under 35 U.S.C. § 103(a).

It is, therefore, readily apparent that the Examiner has not presented a *prima facie* case of obvious under 35 U.S.C. § 103. Accordingly, reconsideration and withdrawal of the actions under 35 U.S.C. § 103 are respectfully requested.

Claims 1-6, 9-11, 16-17 and 21-23 have been alleged to be actionable under 35 U.S.C. § 103 (a) based on U.S. Patent Number 6,319,239 to Daniels et al. (Daniels). This rejection is respectfully traversed to the extent that it may apply to the currently presented claims.

Daniels describes absorbent articles such as sanitary napkins, panty liners, adult incontinence devices, and the like, that have components that are bonded for improved integrity and an unbonded window on their body-facing side for improved acquisition are disclosed. The absorbent articles comprise a topsheet that is fused to an underlying liquid pervious or absorbent layer at a plurality of individual bonded areas. The absorbent articles have an unbonded window that is substantially free of bonded areas, which is surrounded by regions of the absorbent article that contain bonded areas. A sanitary napkin can comprise a liquid pervious topsheet such as an apertured thermoplastic film, a liquid impervious backsheet that is either directly or indirectly joined to the topsheet, an absorbent core, and at least one acquisition component. The absorbent core is positioned between the topsheet and the backsheet. The acquisition component preferably comprises at least one layer of material, such as a fibrous nonwoven web. The acquisition component may either be a separate component positioned between the topsheet and the absorbent core, or it may comprise part of the topsheet or part of the absorbent core. The topsheet and the acquisition component are placed in a face-to-face relationship and the face of the topsheet is secured to the face of the acquisition component at discrete bonded areas. The discrete bonded areas are preferably formed by fusion bonds. The bonded areas are preferably spaced apart and, in one embodiment, are distributed over substantially all of the body-facing side of the sanitary napkin, with the exception of an unbonded window in a liquid receiving zone of the sanitary napkin. The topsheet with the acquisition component bonded thereto and the backsheet are preferably joined together along at least a portion of the periphery of the sanitary napkin. In other embodiments, especially in the case of thicker sanitary napkins, the bonded areas may be arranged similarly, but the bonds can be omitted from certain portions of the body-facing side of the sanitary napkin.

As described by Daniels, the fusion of the faces of the topsheet and the acquisition component maintains these components in an attached condition, even under prolonged use. The sustained attachment also facilitates absorption of liquids into the underlying layers by maintaining an underlying absorbent layer in constant contact with the apertured film topsheet. The unbonded window provides a structure that does not interfere with the acquisition of liquids into the underlying layers.

To the extent that Daniels provides a relevant teaching pertaining to flexibility, however, Daniels at column 13, lines 14-32 states:

....In the above embodiments, or in other alternative embodiments, the absorbent ~~core 42~~ can be provided with a feature to further improve its flexibility. Such a feature could include, but is not limited to one or more slits, perforations, embossments, or score lines in the absorbent core 42 or acquisition component 44. This type of feature is preferably arranged to improve flexibility about the principal longitudinal centerline of the sanitary napkin. The slits, perforations, embossments, or score lines can be in any suitable configuration. Suitable configurations include, but are not limited to straight or curved lines, slits, dots, V-shaped patterns, W-shaped patterns, or the like. The slits, perforations, embossments, or score lines, or any combination thereof can be provided in any of the layers of the laminate absorbent cores described above. One example of a feature that will improve the flexibility of the absorbent core 42 is a score line in the absorbent core that runs along the principal longitudinal centerline of the sanitary napkin.
(emphasis added)

Accordingly, as taught by Daniels, the bonding areas are not the features that appropriately pertain to the flexibility of the articles. Instead, other features such as slits, perforations, embossments, or score lines in the absorbent core or acquisition component would be additionally provided to adjust the flexibility of the article taught by Daniels. Moreover, the flexibility structures taught by Daniels differ significantly from the configurations called for by Applicants' presented claims. If anything, the arrangements taught by Daniels would lead a person of ordinary skill away from Applicants' claimed invention.

It is, therefore, readily apparent that Daniels, fails to disclose or suggest an article which includes a deformation-control member having a selected stiffened region, in the configurations called for by Applicants' presented claims.

Additionally, Daniels does not disclose or suggest a configuration having a deformation control member with a stiffened region which includes a first array of individual, stiffening elements, and at least a second array of individual, stiffening elements, wherein each of the first and second arrays of stiffening elements have a convergently arranged nose-end, and a relatively divergently arranged tail-end, as called for by Applicants' presented claims. Neither does Daniels teach a configuration having a stiffened region wherein the first and second arrays of stiffening elements are counter-positioned, as called for by the claimed invention. Additionally, Daniels fails to disclose or suggest a configuration wherein each nose-end is positioned toward a central region of the article, and each tail-end is positioned toward an end region of the article; or wherein each nose-end is positioned toward an end region of the article, and each tail-end is positioned toward a central region of the article, as called for by particular claims of Applicants. Daniels also fails to teach a configuration wherein the stiffening elements have the recited alignment angles, or wherein

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the deformation-control member is an appointed shaping layer in an absorbent body, as called for by other particular claims. As a result, when compared to Applicants' claimed invention, the structures taught by Daniels would be less able to provide desired regions of controlled flexibility and bending, and would be less able to provide desired levels of fit and comfort.

Accordingly, it is evident that Daniels fails to overcome the deficiencies of Drevik. A proper combination of Drevik and Daniels would still fail to disclose or suggest the particular configurations that are called for by Applicants' claimed invention, and the claimed configurations would not be apparent or "obvious" to the skilled person. Only by using impermissible "hindsight" and by employing Applicants' disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the skilled person be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of Applicants' disclosure, however, the required changes would be unapparent and unobvious to the skilled person.

It is, therefore, readily apparent that none of Drevik, Daniels or any proper combination thereof would teach Applicants' claimed invention. Accordingly, reconsideration and withdrawal of the actions under 35 U.S.C. § 103 are respectfully requested.

Claim 12 has been alleged to be actionable under 35 U.S.C. § 103(a) based on Drevik in view of Daniels. This rejection is respectfully traversed to the extent that it may apply to the currently presented claims.

For the reasons previously set forth herein, it is readily apparent that Drevik and Daniels fail to teach Applicants' claimed invention. When considering a combination with Daniels, it is also submitted that a proper combination of Drevik and Daniels fails to overcome the deficiencies of Drevik, and a proper combination of Daniels and Drevik would still fail to disclose or suggest the invention called for by Applicants' presented claim 12. As a result, when compared to Applicants' claimed invention, the structures taught by Drevik and Daniels would be less able to consistently and reliably flex upwardly towards the wearer's body during ordinary use and would be less able to resist excessive twisting.

In the absence of Applicants' disclosure the synthesis alleged by the Examiner would not be suggested by a proper combination of Drevik and Daniels. The claimed configurations would clearly not be apparent or "obvious" to the skilled person. Only by using impermissible "hindsight" and by employing Applicants' disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the skilled person be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of Applicants'

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disclosure, however, the required changes would be unapparent and unobvious to the skilled person.

It is, therefore, readily apparent that none of Drevik, Daniels or any proper combination thereof would teach Applicants' claimed invention. Accordingly, reconsideration and withdrawal of the actions under 35 U.S.C. § 103 are respectfully requested.

Claim 27 have been alleged to be actionable under 35 U.S.C. § 103(a) based on Drevik, in view of Rasmussen and further in view of Daniels. This rejection is respectfully traversed to the extent that it may apply to the currently presented claims.

As previously discussed, Rasmussen is not an available reference and is not properly citable against the presented claims. It is, therefore, readily apparent that the Examiner has not presented a *prima facie* case of obvious under 35 U.S.C. § 103. Accordingly, reconsideration and withdrawal of the rejection of the claims are respectfully requested.

The prior art of record and not relied upon has been considered pertinent to Applicants' disclosure. It is readily apparent that such art does not disclose or suggest the invention called for by Applicants' currently presented claims.

For the reasons stated above, it is respectfully submitted that all of the currently presented claims are in form for allowance. Accordingly, reconsideration and withdrawal of the rejections, and allowance of the currently presented claims are earnestly solicited.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-2435.

Respectfully submitted,

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